

House Bill 1214

By: Representatives Freeman of the 140th, Talton of the 145th, and Bearden of the 68th

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses related to minors generally, so as to change and enlarge certain forfeiture provisions related to the part; to increase penalties for electronically furnishing obscene material to minors; to provide for venue with respect to prosecuting certain acts under the "Computer and Electronic Pornography and Child Exploitation Act of 2007"; to provide for applicability and an effective date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses related to minors generally, is amended by revising subsections (e), (f), and (g) of Code Section 16-12-100, relating to sexual exploitation of children, forfeiture, and penalties, as follows:

~~"(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:~~

~~(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and~~

~~(B) Any property used, or intended to be used, to commit such offense.~~

~~(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.~~

~~(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.~~

~~(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property~~

under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

~~(f)(1) The following property shall be subject to forfeiture to the State of Georgia:~~

~~(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;~~

~~(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or~~

~~(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section;~~

~~except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.~~

~~(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.~~

~~(g)~~(e)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor."

SECTION 2.

Said part is further amended by revising subsection (c) of Code Section 16-12-100.1, relating to electronically furnishing obscene material to minors, as follows:

"(c) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years or by a fine of not more than \$10,000.00; provided, however, that if at the time of the offense the victim was between 14 and 17 years of age and the defendant was no more than three years older than the victim, then the person shall be guilty of a misdemeanor of a high and aggravated nature."

SECTION 3.

Said part is further amended by revising subsection (i) of Code Section 16-12-100.2, relating to computer pornography and child exploitation prevention, and adding a new subsection to read as follows:

"(i) In a prosecution under this Code section, the crime shall be considered as having been committed in any county where the victim was believed by the accused to reside, or in any county in which any other part of the offense took place, regardless of whether the defendant was ever actually in such county.

(j) Any violation of this Code section shall constitute a separate offense."

SECTION 4.

Said part is further amended by adding a new Code section to read as follows:

"16-12-100.4.

(a)(1) A person who is convicted of an offense under this part shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; or

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this part, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, by a preponderance of the evidence, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(b)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this part;

(B) Any visual medium produced, transported, shipped, or received in violation of this part, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings;

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this part; or

1 (D) Any property or equipment used to lure, solicit, or entice a child in violation of this
2 part;

3 except that no property of any owner shall be forfeited under this paragraph, to the extent
4 of the interest of such owner, by reason of an act or omission established by such owner
5 to have been committed or omitted without knowledge or consent of such owner.

6 (2) The procedure for forfeiture and disposition of forfeited property under this
7 subsection shall be as provided for under Code Section 16-13-49."

8 **SECTION 5.**

9 This Act shall not apply to or affect any forfeiture proceeding pursuant to Code Section
10 16-12-100 commenced prior to the effective date of this Act, to which the provisions of
11 former subsections (e) and (f) of Code Section 16-12-100 shall continue to apply.

12 **SECTION 6.**

13 This Act shall become effective upon its approval by the Governor or upon its becoming law
14 without such approval.

15 **SECTION 7.**

16 All laws and parts of laws in conflict with this Act are repealed.